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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 394 OF 2007

Anil Muralidhar Landge .. Applicant

V/s

The State of Maharshtra .. Respondent

Mr.Nitin Jamdar for the applicant.

Mrs.M.M. Deshmukh, A.P.P. for the respondent.

CORAM : D.G. KARNIK, J.

DATE : 3RD DECEMBER 2007

ORAL JUDGMENT:

1. Heard Mr.Jamdar for the applicant and the learned A.P.P. for the State.

2. This revision application is directed against the judgment and order dated 14th August 2007 passed by the learned Additional Sessions Judge, Pune dismissing Criminal Appeal No.90 of 2001. That appeal was directed against the judgment and order dated 29th June 2001 passed by the learned 6th Adhoc Sessions Judge in Sessions Case No.446 of 2000 whereby the applicant was convicted under sections 306 and 498A of the I.P.C. and was sentenced to suffer rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1000/- and in default to suffer rigorous imprisonment for one month.

3. The facts in brief are as follows:-

(a) The marriage of the complainant's daughter Asha took place with the applicant (accused) on 3rd March 2000 at Chinchwadgaon. After the marriage, Asha went to reside in the house of the applicant who was residing with his mother, brother and brother's wife. As per the custom, Asha came to her parents on 2-3 occasions and returned back. On those occasions, her parents noticed that she was not happy and they found her to be under pressure. On 29th June 2000, her father Uttam Parande along with one Bajirao went to her house to meet her. She was not present. On inquiry, they were told that Asha was admitted in Deshpande Hospital at Chinchwad as she was suffering from fever and cold. The complainant went to meet her and on seeing him, Asha started crying. There, she disclosed that about two days back at a sewing school one lady by name Uma Gharat, who was impleaded as accused no.4, told her that her husband was having an illicit relationship with her and she started quarreling with Asha and asking her why she had married to the applicant though she (accused no.4) had relations with him. At that time, the applicant also came there and assaulted Asha in the presence of Uma. Even after they returned home, the applicant continued to assault her. The complainant (Asha's father) tried to console

her and said that he would talk to the applicant about it. On the next day in the evening at about 5.00 p.m., Asha's brother-in-law took Asha to her parents' house to stay there for 4-5 days in the month of Ashad as per custom and on 8th July 2000 the complainant took her to the house of her elder sister Sadhana. There, Balasaheb, who was the mediator in the marriage, inquired about the marital life and Asha told him about the applicant's illicit relationship with Uma and that the applicant was assaulting Asha daily. Balasaheb assured that he would discuss the matter with her father-in-law and ask him to convince the applicant not to behave in that manner. According to her, on 12th July 2000 Balasaheb discussed the matter with Asha's father-in-law Murlidhar Landge who assured him that he would take care of the matter. Thereupon, Sadhana took Asha to the house of the applicant on 13th July 2007.

(b) On 16th July 2000 at about 7.00 p.m., Asha's brother-in-law Manohar informed Sadhana that Asha had left the house at about 5.00 p.m. in order to go to toilet but had not returned. By that time, one Bhokse (Bhumkar), a relative of Asha's father, informed that he had found Asha on the way and he had taken Asha to his house in Ambegaon. On inquiries, Asha told him and her parents that her husband in a drunken condition assaulted her by fist blows, kicks and polpat (wooden

plank used for preparing chapatis). She further told about the illicit relationship between the applicant and the accused no.4.

(c) On 19th July 2007, when no one was in the house, Asha set herself ablaze by pouring kerosene on her person. She succumbed to her injuries on the same day. Asha's father lodged a complaint at Vishrantwadi Police Station and a crime was registered under C.R. No.63/2000 against the applicant, his mother, brother's wife and Uma Gharat (accused no.4) with whom he allegedly had illicit relationship since prior to the marriage.

(d) Investigation was carried out, spot panchanama was made, suicide note left by Asha was seized. A notebook in the handwriting of Asha was also collected under a panchanama. The chit and the notebook were sent to the handwriting expert who opined that the suicide note was in the handwriting of Asha. At the instance of the applicant, polpat was seized under a panchanama and the statements of witnesses were also recorded. The applicant and 3 others were prosecuted before the Adhoc Additional Sessions Judge, Pune.

(e) The prosecution examined 7 witnesses, namely (1) Uttam Parande, father of Asha - complainant (PW1), (2)

Pancha witness to the seizure of the notebook (PW2), (3) Pancha witness to the seizure of polpat (PW3), (4) Mediator (PW4), (5) Sunanda Sutar, who was residing near the house of Asha (PW5), (6) Dashrat Bhumkar (PW6) and (7) Investigating Officer (PW7). After considering the evidence adduced by the prosecution, the trial court held that there was clear evidence to prove the harassment and ill treatment meted out to Asha by the applicant. The trial court, however, held that evidence was not sufficient to connect the other accused to the crime and there was no evidence that the other accused had caused such harassment to Asha as to drive her to commit suicide. In view of this, the trial court convicted the applicant but acquitted the other accused.

(f) Aggrieved by the aforesaid order, the applicant filed an appeal before the learned Sessions Judge, Pune. The learned Additional Sessions Judge, to whom the appeal was allotted, after elaborate consideration of the evidence, held that the charge against the applicant was proved and there was no merit in the appeal. The learned Sessions Judge accordingly dismissed the appeal.

4. Mr.Jamdar for the applicant submitted before me that the evidence on record was not sufficient to prove that the applicant had subjected Asha to such amount of ill treatment or cruelty as was likely to drive her to

commit suicide. Mr.Jamdar further submitted that there was no evidence to connect the applicant with the illicit relationship, nor was the evidence sufficient to prove the alleged cruelty and, therefore, the courts below erred in convicting the applicant. Mr.Jamdar also took me to the evidence of the witnesses from the compilation submitted by him. I am not persuaded by his submissions.

5. PW1 - Uttam Parande, father of Asha, has stated that he went to the hospital to see Asha on 22nd June 2000. Seeing him, Asha started crying and then she narrated that when she had gone to the sewing class, the accused no.4 questioned her why she had married the applicant who was having illicit relationship with her (accused no.4). She further narrated that at that time, the applicant came there and assaulted her in the class itself. The applicant then took her home and gave her further kicks and fist blows. PW1 further narrated that on 16th July 2000 he received a message from Balasaheb and thereupon they brought Asha home. On inquiries, Asha told him that the applicant was beating her continuously from morning. The evidence of P.W.1 in the cross examination is not shattered.

6. The prosecution has thus proved that the applicant was beating and ill-treating Asha. The main

reason for beating Asha was her objection to the applicant's relationship with the accused no.4. Beating and assaulting Asha are undoubtedly acts of cruelty. One of the assault was in the public place not only in the presence of the accused no.4 but in the public eye in the sewing class itself. Beating in a public place by the husband is humiliation and cruelty which can drive the wife to commit suicide. Besides, under section 113A of the Evidence Act, there is a presumption that when a woman has committed suicide within 7 years of the date of her marriage and her husband is proved to have subjected her to cruelty the court may presume, that having regard to all the circumstances of the case, the suicide has been abetted by the husband. In the present case, the cruelty is proved and the suicide has been within 7 years. The trial court was, therefore, entitled to presume that the applicant had abetted the suicide of Asha. The trial court and the appellate court were therefore right in holding that the applicant had abetted the suicide.

7. In my view, the trial court and the appellate court have correctly appreciated the evidence and convicted the applicant. There is no merit in the revision application which is hereby rejected summarily.

(D.G. KARNIK, J.)